

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Jesus Sanchez, Javier Castro
Francisco Diaz, d/b/a Pomona
Plating; and David Distefano
and David Alvarado.

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980,
42 U.S.C. § 9606(a)).

U.S. EPA Docket No. 98-09

UNILATERAL ADMINISTRATIVE
ORDER FOR
PERFORMANCE OF REMOVAL
ACTION

I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued on this date pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Division, EPA, Region 9 ("Director") by Region 9 Delegations 1290.41 and 1290.42

II. PARTIES BOUND

1. This Order shall apply to and be binding upon Jesus Sanchez, Javier Castro, Francisco Diaz (collectively d/b/a "Pomona Plating," referred to hereinafter as "PP"), David Distefano, and David Alvarado (collectively "Respondents"), and their agents, successors and assigns. No change in ownership or operational status will alter any Respondent's obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondents are each responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order.

III. FINDINGS OF FACT

2. Jesus Sanchez, Javier Castro, and Francisco Diaz (collectively d/b/a Pomona Plating or "PP") are, individually and collectively, the current operators of the facility, and have operated a chrome plating operation at the Site for approximately the past two years. A review of public records, permits, inspection reports, and documents provided to EPA by PP have confirmed that Sanchez, Castro, and Diaz are partners in the business. As part of the chrome plating operations, Respondents Sanchez, Castro, and Diaz generated hazardous substances, which have been released or are threatening to be released from the Site into the environment.

3. Public records and inspection reports maintained by local regulators confirm that David Alvarado conducted a plating operation at the Site from 1993 to 1995 under the name "Silver Works." The inspection reports document that Respondent Alvarado generated hazardous waste at the Site and maintained the premises in "unsatisfactory" condition. When PP took control of the Site in 1995, the floorboards were purportedly covered in plating sludge from the Silver Works' operations, likely contributing to the present threat of release of hazardous substances from the Site into the environment.

4. In conversations with EPA, Respondent Sanchez identified the landlord, or owner, of the Site as David Distefano. Respondent Distefano confirmed that he presently owns the Site and that he operated the facility from approximately 1977 to 1993, under the name "JR Electroplating." Respondent Distefano further confirmed that he leased the premises to Respondent Alvarado, and that is currently leasing the premises to Respondents Sanchez, Castro, and Diaz, d/b/a PP.

5. The Pomona Plating facility is located at 720 Indigo Court, Pomona, California ("Site"). It is located in an area generally zoned for light industrial/commercial use, however, the site shares a common property line to a residential neighborhood directly to the west. The boundaries of the site are generally defined by Towne Street to the east, Yorkshire Street to the

west, the Santa Fe railroad tracks on the north, and Arrow Street to the south.

6. In order to discharge waste water from its plating operations into the sanitary sewer, PP applied for and received a sanitary waste discharge permit #14197 (the "permit") from the Los Angeles County Sanitation District (the "Sanitation District") on March 19, 1996.

7. Throughout 1997, the Sanitation District conducted inspections and issued PP a series of Notices of Violations for the presence of copper and zinc in the waste water discharge. On December 19, 1998, the Sanitation District amended the permit in part ordering the company to eliminate all single pass cooling water discharges to the sewer, to reclaim and treat all waste liquid from spills and drag out, to maintain liquid waste hauler records, and to maintain a spill containment log book.

8. On January 7, 1998, the Sanitation District sampled and documented low pH and high metal residuals in run-off water leaving the Site. In February 1998, PP notified the Sanitation District that operations at the PP facility had ceased. Pursuant to this, the Sanitation District voided PP's discharge permit on February 18, 1998, and required PP to seal its industrial sewer connection within 72 hours. On March 3, 1998, the Sanitation District inspected the Site and verified that PP had sealed its connections with temporary plugs.

9. Concurrent with the Sanitation District's inspections at the PP facility, the Los Angeles County Fire Department Health Hazardous Material Division ("HAZMAT") inspected the Site on April 2, 1996, and issued a Notice of Violation to Jesus Sanchez, citing PP in part for hazardous waste storage violations, poor "housekeeping" practices, and excessive chemical contamination to the floors from dripping products. Between April, 1996 and July, 1997, HAZMAT inspected the Site four times, and noted numerous other hazardous waste violations. In July, 1997, a fire partially damaged the Site, creating two large holes in the ceiling, and a hole in the back wall.

10. Between the time of the July 1997 fire and February 1998, HAZMAT documented ten inspections of the Site. Throughout this time, HAZMAT noted that the conditions of the facility continued to deteriorate. At an administrative hearing on January 14, 1998, Respondent Sanchez agreed to legally dispose of the accumulated waste at the Site and to cease the practice of storing liquid in open containers outside.

11. On February 4, 1998, Paul Biren, a HAZMAT Investigator, inspected the Site. Biren observed storage of over four thousand gallons of liquid waste, twenty seven tons of solid hazardous waste and two roll off bins full of mixed waste. Soil samples from the north property line were analyzed and found to be high in chrome, copper, nickel and zinc.

12. On February 6, 1998, Biren again inspected the Site, this time during a severe rainstorm, and observed containers and berms that were exposed to the rain fall were filling up with water, posing a threat of overflow and release into the environment. Biren took a sample of one such berm full of a light blue liquid that was analyzed and found to have a pH of 1.9. On February 27, 1998, investigators with Los Angeles County executed a Search Warrant at the Site and a criminal investigation is currently ongoing.

13. On April 1, 1998, U.S. EPA received a formal written request from HAZMAT for assistance in evaluating and responding to the conditions at the Site. On May 5, 1998, U.S. EPA conducted a Site Assessment ("Assessment"). This Assessment included conducting a physical walk-through of the facility, and sampling various drums, vats, containers, and surface areas at the Site.

14. The Assessment revealed that the Site includes one structure approximately 10,000 square feet in size, an outside storage area adjacent to the Santa Fe railroad tracks, and a large asphalt parking lot in front of the structure (southern exposure). An active automotive accessories fabrication facility is located in the same complex, approximately 15 feet to the east of the Site. A chain link fence with a locking gate surrounds the property for both the Site and the adjacent business.

An inspection of the interior of the structure revealed that the southern half of the structure's interior space is/was used as a polishing room, office area, and general storage area. The northern portion of the structure housed the main plating line, the water treatment system, a small laboratory, and a chemical storage area.

15. A large amount of hazardous substance, as that term is defined in CERCLA, is currently stored at the Site. An inventory made at the time of the Assessment revealed that in total approximately 36,000 lbs of filter cake was stored in bags on the floor inside the building and 22,000 gallons of hazardous liquid chemicals was stored in drums and vats outside the building. The plating line vats and treatment system inside the structure contained a total of approximately 17,000 gallons of liquid waste. Approximately 3,600 gallons of liquid waste and 440 lbs of solid waste were stored in drums located randomly throughout the interior of the facility, in addition to an unquantified amount of sludge that has accumulated on the floors in the plating and treatment area.

16. The field analysis conducted during the Assessment confirmed the presence of strong acids with a pH of 0-1 both inside the structure and outside of it. The sludge near the treatment area had a PH as high as 12. Aside from the hazardous substances identification made as a result of the field analysis,

some of the containers at the Site were labeled, and others were identified by a consultant hired by PP who had knowledge of the process utilized at the Site and was present during the Assessment. The types of waste and chemical located at the Site included but may not be limited to nitric acid, hydrochloric acid, chromic acid, chromium, copper, and nickel.

17. Nitric acid is a corrosive material that can burn the skin, eyes, and respiratory tract upon direct contact, and when heated or reacted with water, is capable of producing toxic and corrosive fumes.

18. Hydrochloric acid is a strong corrosive which can burn the skin, eyes, and mucous membranes upon dermal contact and can also produce toxic and corrosive fumes when exposed to water.

19. Chromic acid is corrosive to metals and tissue and will react with combustible materials. The heat generated by this reaction may be sufficient to result in ignition of the materials.

20. Chromium is a suspected human carcinogen and is poisonous when ingested, causing adverse gastrointestinal effects.

21. Nickel is a respiratory irritant; acute exposure can cause respiratory tract irritation, nausea, vomiting, and abdominal pains and chronic exposure may cause nasal or lung cancer.

22. The facility is presently non-operational. Present conditions at the Site include the storage of hazardous substances in open drums, vats in deteriorated condition, the presence of large volumes of plating solutions and highly contaminated sludges beneath various tanks and vats at the facility, and a lack of structural integrity to the building and equipment. Both individually and in combination, the present Site conditions present a significant risk of release of hazardous substances into the environment. The regulatory history at the Site indicates that the owners and the operators have not adequately maintained the facility to prevent contamination from leaving the premises, and sampling efforts made by the Sanitation District, HAZMAT, and EPA have documented that hazardous substances has migrated off the Site.

IV. CONCLUSIONS OF LAW

23. The Pomona Plating Superfund site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. The Respondents Jesus Sanchez, Javier Castro, Francisco Diaz (collectively d/b/a Pomona Plating), David Distefano, and David Alvarado are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21).

25. The Respondents Jesus Sanchez, Javier Castro, and Francisco Diaz, d/b/a Pomona Plating, are each current operators

of the Site. Respondent David Alvarado, is a past operator of the Site at times of disposal of hazardous substances.

Respondent David Distefano is the current owner of the Site, and is a former operator of the Site at times of disposal of hazardous substances. Therefore, Respondents are each "liable parties" within the meaning of Section 107(a), 42 U.S.C.

§9607(a), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

26. Nitric acid, hydrochloric acid, chromic acid, chromium, copper, and nickel have been found at the Site. Each of these substances are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

27. The past, present or future migration of hazardous substances from the Site constitutes an imminent and substantial endangerment due to the actual or threatened "release" of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law, the Director of the Hazardous Waste Division, U.S. EPA Region IX, has made the following determinations:

28. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

29. That conditions present at the Site constitute a threat to public health or welfare or the environment based upon a consideration of the factors set forth in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health, welfare and the environment.

30. The actions required by this Order, if properly performed, will be deemed consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"), and are appropriate to protect the public health or welfare or the environment.

VI. NOTICE TO THE STATE

31. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), U.S. EPA has notified the State of California of the issuance of this Order by providing the Department of Toxic Substances Control ("DTSC") with a copy of the same.

VII. ORDER

Based on the Findings of Fact, Conclusions of Law, and Determinations, U.S. EPA hereby orders Respondents to perform the specific work set forth below under the direction of the U.S. EPA's On-Scene Coordinator, and to comply with all requirements of this Order:

A. Work and Deliverables:

32. Respondents shall immediately restrict access to the Site and shall not allow any materials, equipment, or any other

item to be removed from the Site without prior approval from EPA.

33. Within five (5) calendar days after the effective date of this Order, Respondents shall notify U.S. EPA in writing of the name, title, and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondents shall, in accordance with paragraphs 40 and 41 below, be subject to U.S. EPA review and acceptance.

34. Within five (5) calendar days after the effective date of this Order, Respondents shall take all appropriate and necessary measures to secure those portions of the building damaged by fire and shall make all necessary repairs to the roof in order to prevent rain water from entering the facility.

35. Within ten (10) calendar days after the effective date of this Order, Respondents shall prepare and submit to the U.S. EPA for approval all workplan(s) and specification(s) for the removal activities required by this Order. The work plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. Should Respondents plan to continue plating operations at the facility, the proposed schedule must include

the time needed for obtaining all necessary operating permits. Should Respondents not plan of continuing plating operations at the facility, the proposed schedule must include the time needed for the removal of all chemicals on-site, as well as the appropriate decontamination or disposal of all interior surfaces and equipment should they not. Respondents shall also be required to submit weekly written summary reports which summarize the previous weeks activities and those planned for the following week.

36. The removal activities required by this Order and which must be addressed in the work plan, include but may not be limited to:

- a) Identifying all chemical compounds in all vats and other containers, including sampling and analyzing all unknown chemicals and all chemicals in containers without labels or with unreadable labels;
- b) Segregating and securing containers of chemical waste in groups according to compatibility of the chemical contents;
- c) Characterizing, containerizing, and securing all of the spilled material encountered in the water treatment and plating areas;
- d) Transporting and disposing of, in accordance with all applicable or appropriate and relevant federal and state laws, all waste hazardous substances on Site;
- e) Conducting surface and subsurface soil sampling to determine the full nature and extent of soil contamination of contamination;
- f) Disposing, stabilizing, or treating grossly contaminated soils found at or near the surface at the direction of the OSC;

- g) Providing EPA with copies of all documentation related to off-Site disposal of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs;
- h) Notifying the EPA On-Scene Coordinator at least forty-eight (48) hours prior to any on-Site work. Notifying the EPA On-Scene coordinator at least 72 hours prior to disposal of wastes: and
- i) Providing and implementing a post-cleanup sampling and analysis plan.

37. Respondents Workplan shall also include a Health & Safety Plan prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, and shall comply with all current Occupational Safety and Health Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents workplan shall also include a Quality Assurance Project Plan ("QAPP") that is consistent with the "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," EPA OSWER Directive 9360.4-01, dated April 1990. Respondents shall incorporate all changes to the health and safety plan recommended by EPA and implement the health and safety plan throughout the performance of the removal action.

38. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to:

William E. Lewis
On-Scene Coordinator
U.S. EPA (SFD-6)
75 Hawthorne Street
San Francisco, CA 94105

or to such other addressees as U.S. EPA hereafter may designate in writing, and shall be deemed submitted on the date received by U.S. EPA. Respondents shall submit two (2) copies of each document to U.S. EPA, and two (2) copies to the DTSC and LA HAZMAT.

Approval of Workplan

39. a. The Workplan, and any other plan, report, or other deliverable required to be submitted by Respondents shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Workplan. All U.S. EPA comments on draft deliverables shall be incorporated by the Respondents. U.S. EPA shall notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. Once approved, the Workplan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondents shall implement all workplan(s) as finally approved by the U.S. EPA.

b. In the event of any disapproval, U.S. EPA shall specify the reasons for such disapproval, U.S. EPA's required

modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by U.S. EPA, U.S. EPA shall notify the Respondents of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondents for failing to comply with this Order, or may conduct the remaining work required by this Order.

c. Unless U.S. EPA agrees otherwise in writing, Respondents shall complete all elements and work required by the approved Workplan within ninety (90) days after U.S. EPA approval of the same as provided in paragraph 39(a) above.

B. Selection of Contractor(s) and Subcontractor(s):

40. All work performed by or on behalf of Respondents pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation. The selection of such individuals or contractors shall be subject to U.S. EPA acceptance.

41. If U.S. EPA disapproves of any person's or contractor's technical or work-experience qualifications, U.S. EPA will notify the Respondents in writing. Respondents shall, within five (5) working days of receipt of U.S. EPA's written notice, notify U.S. EPA of the identity and qualifications of the replacement(s).

Should U.S. EPA disapprove of the proposed replacement(s), Respondents shall be deemed to have failed to comply with the Order.

42. Respondent(s) shall provide a copy of this Order to all contractors, subcontractors, and consultants which are retained by Respondent(s) to perform the work required by this Order, within five (5) days after the Effective Date of this Order or within five (5) days of retaining their services, which ever is sooner.

43. Respondents may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondents wish to propose such a change, the Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to acceptance by U.S. EPA in accordance with the terms of paragraphs 40 and 41 above. The naming of any replacement(s) by Respondents shall not extend any deadlines required by this Order nor relieve the Respondents of any of their obligations to perform the work required by this Order.

44. Respondents will notify U.S. EPA of their initiation of on-site activities at least one week before initiating them, and

in accordance with paragraph 36(h) thereafter, so that U.S. EPA may adequately schedule oversight tasks.

45. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to U.S. EPA a certification that Respondents or their contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondents shall ensure that the United States is named as an additional named insured on any such insurance policies.

C. General Provisions:

46. All work required by this Order shall be conducted in accordance with: the applicable portions of the EPA Action Memorandum, dated May 13, 1998 (attachment A); CERCLA; the NCP; U.S. EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by U.S. EPA; other applicable U.S. EPA guidance documents; and any report, document or deliverable prepared by U.S. EPA because Respondents fail to comply with this

Order.

47. All plans, schedules, and other reports that require U.S. EPA's approval and are required to be submitted by the Respondents pursuant to this Order shall, upon approval by U.S. EPA, be incorporated into and enforceable under this Order.

48. U.S. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of CERCLA Section, 42 U.S.C. §9604(a)(1).

49. For purposes of this Order, U.S. EPA's authorized representatives shall include, but not be limited to, DTSC, HAZMAT, and any consultants and contractors hired by U.S. EPA to oversee activities required by this Order.

50. Respondents will support U.S. EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondents shall also cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the site, including work performed by U.S. EPA, the State, another Respondent, or any other party performing work at the site with the approval of EPA.

51. Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under

CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

52. Respondent(s) may not convey any title, easement, or other interest they may have, either individually or collectively, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. Any Respondent wishing to transfer any title, easement, or other interest it may have in any property comprising the Site shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall advise U.S. EPA six (6) months in advance of any anticipated transfer of interest.

53. Any hazardous substance removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA "Revised Procedures for Implementing Off-Site Response Actions," (OSWER Directive 98343.11, November 13, 1987).

VIII. EFFECTIVE DATE

54. This Order is deemed effective three (3) days following the receipt of the Order by Respondent(s), unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the

day of such conference unless modified in writing by U.S. EPA.

IX. NOTICE OF INTENT TO COMPLY

55. Respondents shall, within two (2) calendar days of the Effective Date of this Order, provide written notice to U.S. EPA of Respondents' irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

X. OPPORTUNITY TO CONFER

56. Respondents may, within three (3) days of receipt of this Order, request a conference with the Chief of the Emergency Response Office in the Superfund Division, or whomever the Chief of the Emergency Response Office may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at U.S. EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

57. At any conference held pursuant to Respondents' request, the Respondents may appear in person, or be represented by an attorney or other representative. If Respondents desire such a conference, the Respondents shall contact David Rabbino, Assistant Regional Counsel, at (415) 744-1336.

58. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order.

If such a conference is held, the Respondents may present any evidence, arguments or comment regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which the Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to:

David Rabbino (RC-3)
Assistant Regional Counsel
U.S. EPA
75 Hawthorne Street
San Francisco, CA 94105

59. Respondents are hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those

actions.

XI. ENDANGERMENT AND EMERGENCY RESPONSE

60. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's primary On-Scene Coordinator ("OSC"), or, if the primary OSC is unavailable, U.S. EPA's alternate OSC, as designated below in paragraph . If neither of these persons is available, Respondents shall notify the U.S. EPA Emergency Response Unit, Region 9, phone number (415) 744-2000. Respondents shall take such action(s) in consultation with U.S. EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan.

61. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XII. MODIFICATION OF WORK REQUIRED

62. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the U.S. EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days of discovery of the unanticipated or changed circumstances.

63. The Director of the Superfund Division, U.S. EPA Region IX, may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in paragraph 62. Where consistent with Section 106(a) of CERCLA, the Director of the Superfund Division, U.S. EPA Region IX, may direct, as an amendment to this Order, that Respondents perform these response actions in addition to those required herein. Respondents shall implement the additional tasks which the Director of the Superfund Division, U.S. EPA Region IX, identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director of the Superfund Division, U.S. EPA Region IX in any modifications to this Order.

XIII. DESIGNATED PROJECT MANAGERS

64. U.S. EPA designates William Lewis, an employee of Region IX of U.S. EPA, as its primary On-Scene Coordinator

("OSC") and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake any response actions (or portions of the response action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within ten (10) days of the Effective Date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. To the greatest extent possible, the Respondents' Project Coordinator shall be present on Site or readily available during the performance of all work required by this Order. Further, to the maximum extent possible, all oral communications between Respondents and U.S. EPA concerning the activities performed pursuant to this Order shall be directed through U.S. EPA's OSC and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 38 above.

65. U.S. EPA and Respondents may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5)

days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

66. Consistent with the provisions of this Order, the U.S. EPA designates Terry Brubaker, an employee of Region IX U.S. EPA, as an alternate OSC, in the event William Lewis is not present at the site or is otherwise unavailable. During such times, Terry Brubaker shall have the authority vested in the OSC by the NCP, as set forth in paragraph 64 above.

67. The absence of the U.S. EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the U.S. EPA OSC under federal law.

XIV. SITE ACCESS

68. Respondents shall permit U.S. EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as U.S. EPA deems necessary. Nothing in this Order shall be deemed a limit upon U.S. EPA's authority under federal law to gain access to the Site.

69. To the extent that Respondents require access to land other than land they own in carrying out the terms of this Order, Respondents shall, within fifteen (15) days of the Effective Date of this Order, obtain access for U.S. EPA, its contractors, oversight officials, or other authorized representatives; state

oversight officials and state contractors; and Respondents or their authorized representatives. If Respondents fail to gain access within fifteen (15) days, they shall continue to use best efforts to obtain access until access is granted. For purposes of this paragraph, "best efforts" includes but is not limited to, seeking judicial assistance, providing indemnification, and/or the payment of money as consideration for access. If access is not provided within the time referenced above, U.S. EPA may obtain access under Sections 104(e) or 106(a) of CERCLA.

XV. REIMBURSEMENT OF OVERSIGHT COSTS

70. Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Pomona Plating Site by name and make reference to this Order. Respondents shall send simultaneously

to the U.S. EPA OSC notification of any amount paid, including a photocopy of the check.

71. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVI. DELAY IN PERFORMANCE

72. Any delay in performance of any requirement of this Order that, in the U.S. EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

73. Respondents, as applicable, shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying U.S. EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should

not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

74. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

75. If U.S. EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to paragraph 74 above, and specify in writing to the Respondents the new schedule for completion of the activity and/or submission of the document for which the extension was requested.

XVII. RECORD PRESERVATION

76. Respondents shall maintain, during the pendency of this Order, and for a minimum of five (5) years after U.S. EPA provides notice to Respondents that the work has been completed,

a depository of the records and documents required to be prepared under this Order. In addition, Respondents shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this five-year period, Respondents shall notify U.S. EPA at least thirty (30) days before the documents are scheduled to be destroyed. If U.S. EPA so requests, Respondents shall provide these documents to U.S. EPA.

XVIII. ENFORCEMENT AND RESERVATIONS

77. U.S. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

78. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of this response action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

79. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

80. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

81. Notwithstanding compliance with the terms of this Order, including the completion of U.S. EPA-approved response actions, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by U.S. EPA.

82. U.S. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

83. U.S. EPA expressly reserves all rights and defenses that it may have, including the U.S. EPA's right both to disapprove of work performed by Respondents and to request the Respondents perform tasks in addition to those detailed in this Order, as provided in Section VII(a) (Work to be Performed) of this Order.

84. This Order does not release Respondents, individually or collectively, from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand which lawfully may be asserted by representatives of the United States or the State of California.

85. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Order.

XIX. SEVERABILITY

86. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XX. DISCLAIMER

87. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither U.S. EPA nor the United States shall be held as a party to any contract entered into by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXI. PENALTIES FOR NONCOMPLIANCE

88. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondents to a civil penalty of up to \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c) (3) of CERCLA, 42 U.S.C. Section 9607(c) (3).

XXII. TERMINATION AND SATISFACTION

89. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from U.S. EPA that Respondents have demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks which U.S. EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 98-09

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By:

For Keith A. Takata, Director
Superfund Division
Region 9

Date:

May 21, 1998

EPA Region 9 Contacts:

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On-Scene Coordinator (SFD-6)
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Exhibit "A"

Definitions

Unless otherwise expressly provided herein or in the Definitions in exhibit "A" attached hereto, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the Exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"Action Memorandum" shall mean the Action Memorandum issued by the United States Environmental Protection Agency on May 14, 1998.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Contractor" shall mean Respondents' contractor(s) and subcontractors contracted to perform the installation/construction, and operation and maintenance activities relating to any of the specific response actions at the Site Respondents are required to perform.

"Construction" shall mean the Respondents', or their contractor's, installation/construction of the specific response actions each is required to perform.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Identified Contamination" shall mean any contamination, or threat of contamination, resulting from the release, or threat of release, of any hazardous substances, pollutants, contaminants, or solid waste identified in the administrative record for the Site as of the effective date of EPA's Action Memorandum for the

Site, dated May 14, 1998, and other technical reports reflecting the results of all sampling activities conducted at the Site.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Operation and Maintenance activities" shall include future operation and maintenance of all structures built or installed to contain the arsenic contamination at the Site until such time as EPA approves the cessation of such activities.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Parties" shall mean the United States, Jesus Sanchez, Javier Castro, Francisco Diaz, David Distefano, and David Alvarado.

"Response actions" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Unilateral Order.

"Respondents" shall mean Jesus Sanchez, Javier Castro, and Francisco Diaz (collectively d/b/a Pomona Plating), David Distefano, and David Alvarado both individually and collectively.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral and including one or more paragraphs.

"Site" shall mean the Pomona Plating Superfund Site, which is generally located at 720 Indigo Court, and is bounded by Towne Street to the east, Yorkshire Street to the west, the Santa Fe Railroad tracks to the north, and Arrow Street to the south, and is contains an approximately 10,000 square foot building, with several surrounding storage areas, as well as any adjacent areas to which hazardous substances have migrated or may migrate in the future.

"State" shall mean the State of California, and all of its political subdivisions, including the Department of Toxic Substances Control ("DTSC").

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 98-09, and all exhibits

attached hereto. In the event of a conflict between this Unilateral Order and any exhibit, this Unilateral Order shall control.

"United States" shall mean the United States of America.